



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 6 2005

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Cert. No. 7004-1160-0004-8430-9227

In Reply Refer To:
EPA File No: 09R-05-R4

Thomas C. Andrews, County Manager
Office of the County Manager
141 Pryor Street S.W.
Suite 10061
Atlanta, GA 30303

Re: REJECTION OF ADMINISTRATIVE COMPLAINT

Dear Mr. Andrews :

This is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is rejecting the administrative complaint dated January 6, 2005. The complaint was filed by Partners Against Larmore Expansion (P.A.L.E.) on behalf of various communities adjacent to the J.C. Larmore Probation Detention facility operated by the Georgia Department of Corrections (GDC). The complaint alleges that GDC, the Georgia Office of the Governor, the Fulton County Board of Commissioners, the U.S. Army Corps of Engineers (Corps), the Fulton County Department of Environment and Community Development, specifically the Erosion Control Department, and the Deputy County Manager for Justice Systems violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's regulations implementing Title VI, found at 40 C.F.R. Part 7.

Under Title VI, a recipient of Federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI administrative regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's Title VI regulations. First, it must be in writing. Second, it must describe alleged discriminatory acts that violate EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin). Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Fourth, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

OCR is rejecting the complaint due to issues relating to timeliness, discriminatory acts that violate EPA's Title VI regulations, and EPA financial assistance status as discussed below.

Complaint Allegations

- 1. The Georgia Office of the Governor, the Fulton County Board of Commissioners, the Fulton County Department of Environment and Community Development, specifically the Erosion Control Department, and the Georgia Department of Corrections discriminated against complainants when they decided to expand the JC Larmore Probation Detention facility near the Valley Lake and Littleton communities and failed to include the complainants in the decision-making process.**

The complainants allege that the Georgia Office of the Governor, the Fulton County Board of Commissioners, the Fulton County Department of Environment and Community Development, specifically the Erosion Control Department, and GDC excluded them from meetings that were held to discuss the location and final approval of this project. In particular, on February 18, 2002, Fulton County and GDC held a meeting with Fulton County citizens regarding the proposed expansion of the JC Larmore Probation Detention facility (detention facility). The complainants claim that the citizens invited to the meeting did not adequately represent the families that resided in the affected area. Following the meeting, on March 20, 2002, the Fulton County Board of Commissioners approved the expansion and the Georgia General Assembly approved funding for the project.

OCR cannot accept this allegation for investigation because it does not meet all of EPA's jurisdictional requirements. The complaint is in writing, however it was not filed within 180 days of the alleged discriminatory act. A complaint must be filed no later than 180 days after the date of the alleged discriminatory act. The Title VI complaint was filed with the Department of Justice on January 6, 2005. The alleged discriminatory act described in this allegation occurred more than 180 days before the filing of this complaint. In addition, the Fulton County Board of Commissioners and the Fulton County Department of Environment and Community Development, specifically the Erosion Control Department, are recipients of EPA financial assistance, and the GDC is not EPA financial assistance recipient. Since this allegation does not meet all of EPA's jurisdictional requirements, OCR cannot accept this allegation for investigation.

The complaint requests a waiver of the timeliness requirement. Typically, the 180-day period begins when the alleged discriminatory act occurs. Here, the 180-day period began when the meetings were held and the decisions were made in 2002 and 2003. The complaint claims that P.A.L.E. did not and could not have known about the events until nearby trees were cut down in "late February or early March of 2004," at which point, P.A.L.E. "learned of the plans for the new facility." Even under the most favorable interpretation of that statement (use of March 2004 as the date of the discriminatory act), the 180-day period would have ended in September 2004. This

complaint was filed on January 6, 2005, well beyond 180 days of P.A.L.E.'s discovery of plans to expand the detention facility. Consequently, OCR will not grant a waiver of the timeliness requirement.

2. The Georgia Department of Corrections' construction and expansion of the J.C. Larmore Probation Detention facility will have an adverse impact on the nearby wetlands and the community.

The complaint states that GDC's expansion of the J.C. Larmore Probation Detention facility will have an adverse impact on the Valley Lake and Littleton Woods communities, as well as the nearby wetlands. On August 13, 2003, the Georgia Environmental Protection Division, not a party in this matter, issued a Notice of Intent under the National Pollutant Discharge Elimination System (NPDES) General Permit to discharge storm water associated with construction activity to expand the detention facility. In early March 2004, pursuant to the NPDES permit, the GDC mobilized a construction crew to commence the expansion of the detention facility. The complaint states that GDC's construction crew stripped the land cutting down a buffer of trees that was located within 150 feet of the Valley Lakes and Littleton Woods homes property line. Furthermore, the complainants claim that GDC's construction activity caused mud and silt to fill the wetlands, creating an adverse impact on the nearby wetlands and the nearby communities.

OCR cannot accept this allegation for investigation because it does not meet all of EPA's jurisdictional requirements. The complaint is in writing and describes an alleged discriminatory act that would violate EPA's Title VI regulations. However, the GDC is not an EPA financial assistance recipient and the alleged discriminatory act stated in the complaint is untimely. The complaint states that in early March of 2004, the construction of the detention facility resulted in adverse impacts to the wetlands and the community. EPA regulations require that a complaint must be filed no later than 180 days after the date of the alleged discriminatory act. The Title VI complaint was filed and received by the Department of Justice on January 6, 2005. The alleged discriminatory act described in this allegation occurred more than 180 days before the filing of this complaint. Therefore, OCR cannot accept this allegation for investigation.

3. The U.S. Army Corps of Engineers violated Title VI and EPA's regulations implementing Title VI.

The complaint alleges that the Corps violated Title VI and EPA's implementing regulations. The Corps is a federal agency and not subject to Title VI or EPA's Title VI regulations. Moreover, the complaint does not describe a discriminatory act committed by the Corps that occurred within 180 days of the filing of the complaint. Furthermore, OCR learned that as of January 21, 2005, the Corps had not received a permit application for proposed modifications to the jurisdictional waters, including wetlands, related to this

proposed expansion.¹ Therefore, OCR cannot accept this allegation of discriminatory conduct by the Corps.

4. The Deputy County Manager for Justice Systems violated Title VI and EPA regulations implementing Title VI.

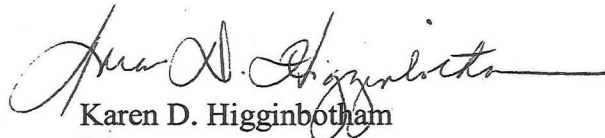
The complaint states that the Deputy County Manager for Justice Systems violated Title VI and EPA regulations implementing Title VI. Since this allegation fails to describe an alleged discriminatory act that violates EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin), OCR cannot accept this allegation for investigation.

Recent Developments

As noted in the complaint, Upper Chattahoochee Riverkeeper (UCR) filed a lawsuit against GDC in April 2005 concerning the detention facility.² As a result of the lawsuit, GDC entered into an agreement with UCR "ensuring permanent protection of the restored wetlands immediately adjacent to the Larmore expansion site and the vegetated buffer."³ In addition, GDC agreed to pay UCR \$50,000 and will attempt to place about 8.5 acres into a conservation easement to prevent future development. Although, the allegation concerning the erosion of wetlands was rejected for lack of timeliness and EPA financial assistance status, hopefully the GDC agreement will aid in the restoration of eroded wetlands in the Valley Lakes and Littleton Woods communities.

If you have any questions, please contact Ms. Helena Wooden-Aguilar of my staff by telephone at (202) 343-9681, by e-mail at Wooden-Aguilar.Helena@epa.gov, or by mail to the U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,


Karen D. Higginbotham
Director

Enclosure

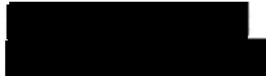
cc: Partners Against Larmore Expansion

¹ Letter from Michael L. Alson, Director, U.S. Department of Justice, Office of Justice Programs, Office of Civil Rights, to Stephen Pressman, Esq. EPA, regarding the complaint filed by Mrs. AnJeanne' James, March 30, 2005.

² Complaint 09R-05-R4 (filed by Partners Against Larmore Expansion) pg. 14-17.

³ *Upper Chattahoochee Riverkeeper Fund, Inc. v. James Donald, Georgia Department of Corrections*, In the United States District Court for the Northern District of Georgia Atlanta Division, Case 1:05-cv-00955-ODE, Document 18, filed October 07, 2005.

C/o Mrs. An Jeanne' J. James



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